

HOUSE BILL REPORT

EHB 1530

As Passed Legislature

Title: An act relating to creating the guaranteed asset protection waiver model act.

Brief Description: Creating the guaranteed asset protection waiver model act.

Sponsors: Representatives Kirby and Bailey.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/3/09, 2/17/09 [DP].

Floor Activity:

Passed House: 3/9/09, 96-0.

Senate Amended.

Passed Senate: 4/8/09, 41-2.

House Concurred.

Passed House: 4/18/09, 97-0.

Passed Legislature.

Brief Summary of Engrossed Bill

- Provides a regulatory framework for guaranteed asset protection waiver.
- Establishes contractual provisions for waivers.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass. Signed by 7 members: Representatives Kirby, Chair; Kelley, Vice Chair; Hurst, McCoy, Nelson, Santos and Simpson.

Minority Report: Do not pass. Signed by 3 members: Representatives Bailey, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Roach.

Staff: Jon Hedegard (786-7127)

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Insurance Commissioner (Commissioner) regulates insurance in this state. This includes oversight of rates, forms, financial conditions, claims practices, and other matters related to the business of insurance.

When a product is sold, it is generally insured for the replacement value. If a product is financed, a "gap" between the financing and the replacement value of the product may occur at some point in time. In other words, a consumer may have a greater unpaid balance on the product than the insured value of the product. If the product is destroyed, the owner may recover an insufficient amount of insurance proceeds to fully pay off the borrowed amount. Insurers offer coverage for this "gap." Some financial institutions, retailers, auto dealers and other merchants offer a contractual waiver to consumers.

Retail installment contracts are regulated by state law. These are transactions between a particular retailer and a consumer, such as a department store or automobile dealer installment contracts. State law generally requires that retail installment contracts provide certain disclosures, describes the contents of an installment contract, and prohibits certain practices related to installment contracts. Federal Truth in Lending Act provisions also apply to retail installment contracts.

Summary of Engrossed Bill:

A number of definitions are created. "Administrator" is defined as a person, other than an insurer or creditor, that performs administrative or operational functions under a guaranteed asset protection waiver program. "Guaranteed asset protection waiver" (waiver) is defined as a contractual agreement where a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of the motor vehicle.

An administrator, an insurer, or a lender who does not use an administrator, may not offer or sell, or hold itself out as being able to offer or sell a waiver in this state unless it is registered by the Commissioner. Retail sellers of motor vehicles and insurers or lenders that are already licensed or authorized to transact business in this state are exempt from registration. A federal- or state-chartered bank is exempt from the provisions of this act but may choose to participate under the act. Retail sellers of motor vehicles are not required to be registered under the act if they transfer 85 percent of their waiver agreements within 30 days and transfer all waiver agreements within 45 days.

Registration.

An application for registration must include:

- the applicant's name, address, and telephone number;
- the identities of the applicant's executive officers or other officers directly responsible for the waiver business;
- an application fee of \$250; and
- a copy of the waiver addendums the applicant intends to offer in this state. This is filed with the Commissioner for informational purposes only;
- a list of unregistered marketers of waivers on which the applicant will be the obligor; and
- any additional information required by the Commissioner.

Once registered, a person or entity must report any changes in registration information.

Waivers.

A waiver must:

- state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the waiver agreements;
- cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement;
- provide a minimum "free look" period of 30 days. A waiver agreement may be cancellable or noncancellable after the "free look" period;
- provide a full refund of the purchase price if no benefits have been provided and the waiver is cancelled in the "free look" period. If benefits have been provided, the borrower may receive a full or partial refund; and
- provide for a refund of any unearned portion of the purchase price if the borrower makes a written request for a refund within 90 days of termination of the finance agreement. Any cancellation refund may be applied by the creditor as a reduction of the amount owed under the finance agreement if the finance agreement has not been paid in full.

Waivers may be sold for a single payment or may be offered with a monthly or periodic payment option. The extension of credit, the terms of the credit, or the terms of the related motor vehicle sale or lease, may be not conditioned upon the purchase of the waiver. False or deceptive advertising is prohibited. Unfairly discrimination by a person or entity in the business of making waivers is prohibited.

Disclosure.

Guaranteed asset protection waivers must disclose:

- the name and address of the initial creditor and the borrower at the time of sale, and the identity of any administrator if different from the creditor;
- that the waiver is not credit insurance;
- the purchase price and the terms of the waiver;
- information regarding cancellation within a "free look" period and possible refunds;
- any procedure the borrower must follow to obtain waiver benefits;
- any conditions or procedures to cancel a waiver and receive any refund if the waiver is cancellable after the "free look" period;
- the method for calculation of any refund; and
- that the extension of credit, the terms of the credit, or the terms of the related motor vehicle sale or lease, may be not conditioned upon a waiver purchase.

Insurance.

Insurance policies insuring waivers must:

- state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the waiver agreements;
- cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement; and
- remain in effect unless canceled or terminated in compliance with applicable state insurance laws.

Enforcement.

The Commissioner may take action to enforce this chapter. After notice and the opportunity for a hearing, the Commissioner may:

- suspend, revoke, or refuse to issue a license; and
- impose a penalty of up to \$2,000 per violation and up to an aggregate of \$10,000 for all similar violations.

A person who sells a waiver without registering with the commissioner:

- is subject to a \$25,000 penalty;
- is personally liable for performance and the borrower may void the transaction; and
- is guilty of a Class B felony if the person is knowingly committing the violation.

The disclosure and enforcement provisions of this act are not applicable to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

Account.

The Guaranteed Asset Protection Waiver Account (Account) is created in the custody of the State Treasurer. The fees and fines collected under this act must be deposited into the Account. Expenditures from the Account may be used only for the costs of enforcing this chapter. Only the Commissioner or the Commissioner's designee may authorize expenditures from the Account.

Rules.

The Commissioner may adopt rules to implement the act.

Implementation.

This act applies to guaranteed asset protection waiver agreements entered into on or after January 1, 2010.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Gap insurance has been around for quite some time. There are other similar products that may not be insurance where some clarification of the law and oversight may be useful. This bill is not about an insurance product. In gap insurance, there is a third party. This bill deals with two-party transactions where a lender waives an amount owed by a borrower. An example is someone who buys a car and it is stolen. The person may still owe more than the replacement value. In this scenario, the lender may agree to waive the difference. These lenders may be financing arms of vehicle manufacturers or other entities. This product exists today. The Office of the Insurance Commissioner (OIC) has raised the

question of whether this product should be regulated as insurance. Federal law specifically exempts federally-chartered financial institutions from state regulation in this area. Not all of these lenders are federally-chartered though; that remaining group is targeted in this bill. The conversations with the OIC have been productive. Some issues are still being discussed. All parties are welcome to discuss any issues that they may have with this bill. The OIC supports the concepts of the bill. The OIC is working with industry to resolve some outstanding issues.

(With concerns) There are no concerns about how this bill applies generally. There may be some overlap with debt cancellation contracts. It looks like language in section 1 attempts to exempt those contracts but it applies only to products regulated under federal law. It should apply also to other products.

Persons Testifying: Representative Kirby, prime sponsor; Mel Sorensen, Guaranteed Asset Protection Alliance; and Carol Sureay, Office of the Insurance Commissioner.

(With concerns) Stacy Augustine, Washington Credit Union League.

Persons Signed In To Testify But Not Testifying: None.